

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARISA JOHNSON,

Defendant-Appellant.

UNPUBLISHED

March 1, 2005

No. 251308

Wayne Circuit Court

LC No. 03-004645-01

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Larisa Johnson appeals as of right her convictions of second-degree murder¹ and arson of a dwelling house² entered after a jury trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Johnson was charged with first-degree murder³ and arson in the death of Glenda Prophet and the burning of her body and a sofa. Prophet died from several blunt force blows to the head. Her body burned when the sofa on which she was found was set on fire.

Johnson made three statements to the police. In one statement she denied any involvement in Prophet's death. In the other two statements she admitted striking Prophet with a pipe after Prophet allegedly struck her with a hammer. Johnson indicated that she might have set the sofa on fire accidentally with a crack pipe. She maintained that Prophet was alive when she left Prophet's residence. At trial, Johnson testified that the two statements she made in which she admitted striking Prophet were false and had been coerced, and that the statement in which she denied any involvement in Prophet's death was true.

¹ MCL 750.317.

² MCL 750.72.

³ MCL 750.316.

The trial court denied Johnson's request to instruct the jury on the offenses of voluntary or involuntary manslaughter, finding that no evidence of provocation or accident supported instructions on those offenses. The jury convicted Johnson of second-degree murder as a lesser-included offense of first-degree murder and of arson of a dwelling house.

II. Standard Of Review

We review de novo claims of instructional error.⁴

III. Elements Of The Offenses

The elements of second-degree murder are: (1) a death; (2) caused by the defendant's act; (3) with malice; and (4) without justification.⁵ The elements of voluntary manslaughter are: (1) that the defendant killed in the heat of passion; (2) that the passion was caused by an adequate provocation; and (3) that there was not a lapse of time during which a reasonable person could have controlled his passions. Provocation is not an element of voluntary manslaughter, but rather is a circumstance that negates the presence of malice.⁶ Involuntary manslaughter is the unintentional killing of another, without malice, during the commission of an unlawful act not constituting a felony and not naturally tending to cause great bodily harm, or during the commission of a lawful act negligently performed, or in the negligent omission to perform a legal duty.⁷

IV. Jury Instructions

A jury instruction on a lesser-included offense is appropriate if all the elements of the lesser offense are included in the greater offense and if a rational view of the evidence supports the giving of the instruction.⁸ The elements of manslaughter are included in the offense of murder. When a defendant is charged with murder, instructions for voluntary and involuntary manslaughter must be given if those instructions are supported by a rational view of the evidence.⁹

The evidence indicated that Prophet died from several blunt force blows to the head, after which her body was burned when the sofa on which she was found was set ablaze. The evidence that Johnson struck Prophet in the head with a metal object, if believed by the jury, would not support a finding that she committed either voluntary or involuntary manslaughter. The provocation necessary to mitigate a homicide from murder to voluntary manslaughter must be

⁴ *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002).

⁵ MCL 750.317.

⁶ *People v Mendoza*, 468 Mich 527, 535-536; 664 NW2d 685 (2003).

⁷ *Id.* at 536.

⁸ *People v Nickens*, 470 Mich 622, 626; 685 NW2d 657 (2004).

⁹ *Mendoza, supra* at 541.

that which would cause a reasonable person to lose control.¹⁰ Johnson made statements to the police in which she claimed that she and Prophet argued and exchanged blows after discussing another person's attempts to lure away Johnson's prostitution customers. The trial court correctly found that a reasonable jury could not find that the provocation Johnson described was adequate to mitigate a homicide from murder to manslaughter, especially given that, first, Prophet was not the person who engaged in the actions that supposedly angered Johnson and, second, Johnson claimed at trial that her statements to the police about striking Prophet were coerced and she instead denied any involvement in Prophet's death.

The evidence that Johnson struck Prophet several times with a metal object would not support a finding either that Johnson engaged in an unlawful act not constituting a felony and not naturally tending to cause great bodily harm, or that she acted in a grossly negligent manner.¹¹ The trial court correctly found that a rational view of the evidence did not support the giving of an instruction on either voluntary or involuntary manslaughter.¹² The trial court's failure to give requested lesser included offense instructions on voluntary and involuntary manslaughter did not undermine the reliability of the verdict because those instructions were not supported by a rational view of the evidence.¹³ We conclude that no instructional error occurred.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen

¹⁰ *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998).

¹¹ *Mendoza, supra* at 536.

¹² *Id.* at 541.

¹³ *People v Lowery*, 258 Mich App 167, 172-173; 673 NW2d 107 (2003).